In the Supreme Court of the United States

October Term, 1935

No. 61

JOHN A. NELSON COMPANY, PETITIONER

v.

GUY T. HELVERING, COMMISSIONER OF INTERNAL REVENUE

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT

MEMORANDUM FOR THE RESPONDENT

We do not oppose the granting of a writ of certiorari in this case.

Petitioner, on November 18, 1926, entered into a contract with Elliott-Fisher Company, under the terms of which the latter agreed to organize a new corporation and purchase all of its voting common stock. Petitioner obligated itself to convey to the new corporation all of its assets, except $100,000 in cash. The new corporation assumed all the ordinary obligations of the petitioner and in payment of the assets transferred, issued, and deliv-

ered to petitioner all of its preferred nonvoting stock and $2,000,000 in cash. (R. 28–32.) This preferred stock was callable at any dividend date upon thirty days' notice, at the option of the new corporation. (R. 14.) The petitioner immediately used part of the cash so received to retire its own preferred stock and distributed the preferred stock of the new company and the balance of the cash to its common stockholders. (R. 31.) The question is whether or not the transaction here involved constituted a reorganization within the meaning of Section 203 of the Revenue Act of 1926.

The court below held that the transaction does not come within the intendment of the statutory definition of reorganization; that it was a sale; that it did not partake of the nature of a merger or consolidation, nor did the petitioner control the new corporation which acquired its assets. We submit that the court below applied the proper principles and reached a correct result. As the preferred stock, callable at the option of the transferee, does not satisfy the statutory language "stock or securities", the decision might well rest solely upon the authority of *Pinellas Ice Co.* v. *Commissioner,* 287 U. S. 462. But in view of the more liberal construction of the statutory definition adopted in *Watts* v. *Commissioner,* 75 F. (2d) 981 (C. C. A. 2d), and *Minnesota Tea Co.* v. *Commissioner* (C. C. A. 8th), 76 F. (2d) 797, we do not feel warranted in opposing the petition.

The Government has filed petitions for certiorari in the *Watts* and *Minnesota Tea Co.* cases, Nos. 184 and 174, respectively, October Term, 1935.

Respectfully submitted,

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JUNE 1935.

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